Bail Slip

The 1st Appellant herein (viz.,) Murugan S/O.Bairavan Accused No.1 in SC.No.261/2001 on the file of 1st Additional Sessions Judge, Dharmapuri District @ Krishnagiri was directed to be released on bail as per order of this Court dated 21.12.2004 and passed in Crl.M.P.No.11829/04 in Crl.A.No.1360/2004.

The 3rd Appellant herein (viz.,) Rangan @ Govindan S/O.Venkataraman Accused No.3 in SC.No.261/2001 on the file of 1st Additional Sessions Judge, Dharmapuri District at Krishnagiri was directed to be released on bail as per order of this Court dated 04.04.2006 and passed in Crl.M.P.No.2497/2006 in C.A.No.1360/2004.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.9.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE M.THANIKACHALAM

Criminal Appeal No.1360 of 2004

1.Murugan
S/o.Bairavan
2.Murugan
S/o.Venkatraman
3.Rengan @ Govindan
S/o.Venkataraman Appellants/Accused 1 to 3

vs.

State, rep. by
Inspector of Police,
Royakottai Police Station,
Royakottai, Krishnagiri District
[Cr.No.33 of 2001] Respondent

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Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of the learned 1st Additional Sessions Judge, Dharmapuri District at Krishnagiri dated 22.6.2004 in Sessions Case No.261 of 2001.

For Appellant : Mr.V.Gopinath, Sr. Counsel for Mr.K.Selvarangan

For Respondent : Mr.C.T.Selvam, Additional Public Prosecutor

JUDGMENT

(Delivered by P.D.DINAKARAN,J.)

The appellants, accused 1 to 3 in Sessions Case No.261 of 2001 on the file of learned First Additional Sessions Judge, Dharmapuri District at Krishnagiri, questioning the correctness of the judgment of conviction and sentence dated 22.6.2004 rendered in the above said sessions case, preferred this appeal.

2. The charge against the accused is that due to family dispute, with the common intention to murder the deceased Krishnan, on 30.1.2001 at 7.00 p.m. at Karamalaikadu Kanjalam, near the house of Krishnan, the accused 2 and 3 beat Krishnan on his head with sticks, the first accused slapped him on his left cheek and the 4th accused kicked him with leg and caused grievous injuries as a result of which the deceased died in hospital next day at 12.30 p.m. and thereby, committed the offence punishable under Section 302 read with 34 I.P.C.

3.1. Prosecution version, as unfolded during trial, is essentially as follows:

3.2. P.W.1 is the son, P.W.2 is the wife and P.W.3 is the daughter of the deceased Krishnan. The first accused Murugan is the brother of the deceased. Accused 2 to 4 are brothers among themselves. All are residing in the same village.

3.3. Murugammal, sister of accused 2 to 4 was given in marriage to P.W.1 Murugan. After giving birth to a female child, Murugammal refused to come to matrimonial home, in spite of P.W.1 asking her to come with him. Hence, P.W.1 beat her and returned. On the same day, at about 7.00 p.m., the 4th accused – Muniappan, brother of Murugammal came and scolded

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the deceased, father of P.W.1 in filthy language. P.W.1 and others reported the same to the Panchayatdars.

3.4. On 30.1.2001 at about 7.00 p.m., the 4th accused scolded the deceased, father of P.W.1 in filthy language for which the deceased told that there was nothing wrong in complaining to the panchayatdars. At that time, P.W.1's younger paternal uncle Murugan/1st accused beat the deceased on his left cheek by saying, why he had gone for panchayat. The 2nd accused armed with stick (Thonnai-M.O.1), beat the deceased on his left head with force. The 3rd accused beat the deceased on his head with stick (Thonnai-M.O.2). Then, the deceased fainted with blood oozing from the wound.

3.5. Though P.W.1 claimed that at the time of occurrence P.Ws.2 and 3 were present, P.Ws.2 and 3 turned hostile.

3.6. On hearing the alarm raised by P.W.1, one Mariappan and Raman came to the scene and all of them took the deceased to the Government Hospital, Krishnagiri at 11.00 p.m.

3.7. P.W.6 was the Resident Surgeon, who on 30.1.2001 at 11.30 p.m. admitted the deceased in the Hospital for treatment. At that time, the deceased was in coma condition. P.W.6 gave Ex.P-7 intimation to the Police. P.W.8, Head Constable received the intimation Ex.P-7 and visited the Hospital at 12.00 midnight and found the deceased in coma condition. He recorded Ex.P-1 statement from P.W.1.

3.8. P.W.12, Sub Inspector of Police, on receipt of wireless message on 31.1.2001 at 9.00 a.m., registered a case under sections 341, 323 and 307 IPC and prepared Ex.P-14 first information report. On 31.1.2001 at 12.30 p.m., on receipt of death intimation Ex.P-15 handed over by P.W.13, he altered the case into one under section 302 IPC and prepared express report Ex.P-16.

3.9. P.W.14, Inspector of Police took up investigation and visited the Government Hospital, Krishnagiri at 2.40 p.m. on 31.1.2001. He conducted inquest over the dead body and prepared Ex.P-17 inquest report in the presence of witnesses and panchayatdars. He issued Ex.P-8 requisition for postmortem. P.W.7 Head Constable handed over Ex.P-8 requisition to P.W.9.

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3.10. P.W.9 Assistant Surgeon attached to Government Hospital, Krishnagiri conducted postmortem and found the following injuries:
External injuries:-

1. A sutured wound left parietal region 5 cm. In length.

2. Clotted blood present in left ear.

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3. Frothy discharge from mouth present.
During internal examination, P.W.9 found clotted blood over the surface of right parietal bone. He also found a transverse fracture of right parietal bone up to right temple about 12 cm length. Dura and left parietal region was found lacerated and part of brain was protruding through the dura present. P.W.9 was of the opinion that the deceased would appear to have died of shock and heamorrhage due to injury to skull and brain, about 6 to 14 hours prior to autopsy. He issued Ex.P-9 postmortem certificate.

3.11. On 31.1.2001 at 5.30 p.m., P.W.14 visited the scene of occurrence and prepared Ex.P-3 observation mahazar in the presence of P.W.4. He also drew rough sketch, Ex.P-18. He seized M.O.4 bloodstained earth and M.O.5 sample earth under Ex.P-2 in the presence of P.W.4. Under Form-95, he seized underwear(epf;fu;) M.O.6 and shirt of the deceased, produced by P.W.7 Head Constable. On 7.2.2001 P.W.14 arrested all the accused at Gowramma Eri Bus stop in the presence of P.W.11. He recorded the voluntary confession of second accused. He seized two bloodstained sticks produced by the 2nd accused from the house of one Bairavan, on the basis of his confession. He sent requisition Ex.P-10 and material objects to the Magistrate to forward the same for chemical analysis. P.W.10, Head Clerk, Judicial Magistrate's Court concerned forwarded the material objects for chemical analysis under Ex.P-11 letter and received Ex.P-12 chemical analyst's report and Ex.P-13 serologist's report. He examined the witnesses and recorded their statements. After completing the investigation, he laid the final report under section 302 and 302 read with 34 IPC.

3.12. Since the accused denied the charges, they were tried in S.C.No.261 of 2001 on the file of the learned 1st Additional Sessions Judge, Dharmapuri District at Krishnagiri.

4. Before the Sessions Court, on behalf of the prosecution, P.Ws.1 to 14 were examined as witnesses and Exhibits P1 to P18 and material objects M.Os.1 to 6 were marked as referred to above.

5. When the accused were questioned under Section 313 Cr.P.C. in respect of the incriminating circumstances appearing against them, they denied the same. The accused neither examined any witness, nor marked any document on their side.

6. On consideration of the oral and documentary evidence available on record, even though the charge was framed against each of the accused under section 302 read with 34 IPC, the learned Sessions Judge convicted the first accused under section 302 read with 34 IPC and sentenced him to

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undergo life imprisonment and to pay fine of Rs.3,000/- and convicted the accused 2 and 3 under section 302 IPC and sentenced each of them to undergo life imprisonment and to pay a fine of Rs.3,000/- and he also imposed default sentence. However, learned Sessions Judge found the 4th accused not guilty of charge under section 302 read with 34 IPC and acquitted him. Questioning the conviction and sentence under section 302 IPC, accused 1 to 3 have come forward with this appeal.

7.1. Mr.Gopinath, learned senior counsel appearing for the appellants fairly submits that he is not disputing either the occurrence or the motive behind it.

7.2. According to him, the occurrence took place due to sudden fight in which the accused lost the power of self-control and attacked the deceased. Learned senior counsel submitted that as per prosecution case, the first accused only slapped the deceased on his cheek and he cannot be punished under section 302 read with 34 IPC. Similarly, the 3rd accused is said to have attacked on the head of the deceased with stick for which there is no specific corresponding medical evidence and hence, he may not be convicted under section 302 IPC.

7.3. He further submitted that though the medical evidence corroborates the prosecution version that the injury inflicted by the 2nd accused was the cause for death of the deceased, the occurrence took place due to a sudden fight and hence, it is a culpable homicide not amounting to murder and the action of 2nd accused may come under Exception-4 to Section 300 I.P.C. He therefore submitted that the accused 1 to 3 may be awarded lesser punishment considering the overt acts attributed to each of them.

8.1. On the other hand, the learned Additional Public Prosecutor contends that it is the evidence of P.W.1 that the 1st accused slapped the deceased on his cheek, accused 2 and 3 attacked him on his head with sticks resulting in the death of the deceased. According to him, though the 1st accused slapped on the cheek, he, along with other accused, had common intention to murder the deceased and the finding of trial Court that all the three appellants are responsible for the death of deceased Krishnan is based on ocular testimony of P.W.1, supported by medical evidence and therefore, there is no need to interfere with the well considered judgment of the trial court.

8.2. According to the learned Additional Public Prosecutor, when there is every reason to infer from the evidence that the appellants had knowledge and intention to kill the deceased, the appellants are not entitled to the benefit of any Exception to Section 300 IPC and the judgment of the trial court does not require any variation or modification and the appeal is liable to be dismissed.

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9. We have given our careful consideration to the submissions made by the learned counsel on either side and also perused the records.

10. It is not disputed that the parties are close relatives. P.W.1, who is the son of the deceased, is nonetheless the brother-in-law of accused 2 to 4. The 1st accused is the brother of the deceased. Concededly, there were frequent quarrels between P.W.1 and his wife and at the time of occurrence, his wife went to her parents' house for delivering a child. It is clear from the evidence of P.W.1 that when his wife refused to come to the matrimonial house, P.W.1 beat her, for which the 4th accused later came to P.W.1's house and scolded his father, the deceased, in filthy language. Since the witness party reported the dispute to the panchayatdars, as per prosecution version, on the date and time of occurrence, the 1st accused beat the deceased on his cheek, 2nd accused attacked on his left head with M.O.1 stick and 3rd accused beat on his head with M.O.2 stick.

11. Though P.W.2, wife of the deceased, turned hostile, her evidence helps to prove the motive behind the occurrence. The medical evidence would go to show that the deceased died due to injuries sustained by him. We therefore hold that the prosecution has proved the motive as well as the occurrence in which the deceased was done to death, by means of eye-witness, supported by medical evidence. Of course, the defence is also not disputing the same.

12. Now, let us consider whether the accused 1 to 3 are entitled to any lesser punishment.

13. The prosecution rests its case on P.W.1, son of the deceased. Though solitary, his evidence is cogent and categorical. As regards first accused, it is the evidence of P.W.1 that he slapped on the cheek of the deceased. As rightly pointed out by Mr.Gopinath, learned senior counsel, the overt act attributed to the 1st accused would not be the cause of death. But, to discharge the 1st accused from the charge under section 302 read with 34 IPC, the question whether the accused had common intention to cause death of the deceased has to be gone into.

14. Admittedly, there was family quarrel between both the sides, but it is not the evidence of P.W.1 that all the accused came with the common intention of murdering the deceased. What is available in the evidence of P.W.1 is that on the date and time of occurrence, the 4th accused scolded the deceased as to why he brought the family dispute to the panchayat, and when the deceased justified his action, immediately the first accused slapped the cheek of the deceased by stating why he reported the matter to the panchayat and accused 2 and 3 beat the deceased with sticks. Therefore it cannot be stated that the accused came to the scene with the

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common intention of murdering the deceased. So, the conviction under section 302 read with 34 qua 1st accused is not sustainable and at the most, he can be punished for an offence under section 323 IPC as his presence in the scene of occurrence as well as his overt act on the deceased has been spoken to by P.W.1 which is not contradicted in cross-examination.

15. Coming to the conviction of 3rd accused, it is the case of the prosecution that the 3rd accused beat the deceased on his head with M.O.2 stick. P.W.1 in his evidence has stated that the 2nd accused beat his father on his left head with M.O.1 and the 3rd accused beat him on his head with M.O.2. After the occurrence, the deceased was taken to hospital where P.W.6 admitted him as in-patient. But, P.W.6 has not noticed any injury on the deceased at that time. In his evidence he has stated that only on perusal of records, he could say what kind of treatment was given to the deceased. Further, P.W.9 doctor, who conducted autopsy, only found one external injury on the left parietal bone, though during internal examination, he found injury on the right parietal bone. Since it is stated by P.W.1 that the 2nd accused attacked his father on his left head, the external injury found by P.W.9 doctor could have been caused by the second accused. In the absence of any specific relative external injury on the right head of the deceased, as found by P.W.9 doctor, it is not safe to convict the third accused under section 302 IPC. However, it is made out by the prosecution that the 3rd accused also attacked the deceased on his head with M.O.2, which has been recovered on the basis of confession statement given by the 2nd accused. A perusal of the serologist's report Ex.P-13 shows that the bamboo stick (M.O.2) contains human blood. P.W.9 doctor, during internal examination, found an injury on the right parietal. Considering all the above, we find the 3rd accused guilty for the offence under section 323 IPC and not under section 302 IPC.

16. As regards the 2nd accused, he was convicted under section 302 IPC. The evidence against him is, as spoken to by P.W.1, that he beat the deceased on his left head with M.O.1. P.W.1 has specifically stated that the 2nd accused beat his father with force (X';fpg; nghl;lhd;). The evidence of P.W.1 remains unchallenged. P.W.9 doctor found an external injury on the left parietal bone. P.W.9 was of the opinion that the death occurred due to the injuries on the head, shock and haemorrage. From the above, we have no hesitation to conclude that the 2nd accused caused injury on the head of the deceased which led to his death.

17. The next question to be decided is whether the action of the 2nd accused would attract section 302 IPC or it would come under the Exception 4 to section 300 IPC, as pleaded by the learned senior counsel appearing for the appellants.

18. It is the case of prosecution that there was wordy quarrel, followed by the attack on the deceased. As already observed, there was no common intention among the accused to do away with the deceased. It is

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not the evidence of P.W.1 that the accused armed with weapons, came to the scene and beat his father. Out of the wordy quarrel, the occurrence happened. Hence, it cannot be stated that the crime committed by the 2nd accused would come under section 302 IPC. Since the occurrence took place out of wordy quarrel, necessarily the question follows whether the action of the second accused would come under Exception 4 to section 300 IPC.

19. In SACHCHEY LAL TIWARI v. STATE OF U.P. [(2004) 11 SCC 410], the Supreme Court held that for bringing in operation of Exception 4 to Section 300 IPC, it has to be established that the act was committed without premeditation, in a sudden fight, in the heat of passion upon a sudden quarrel without the offender having taken undue advantage and not having acted in a cruel or unusual manner.

20. The Supreme Court recently in Sandhya Jadhav v. State of Maharashtra [(2006) 4 SCC 653] held that for bringing the act of accused into the operation of Exception-4 to section 300 IPC, it has to be established that the death was caused (a) without premeditation, (b) in a sudden fight, (c) without the offender having taken undue advantage or acted in a cruel or unusual manner, and (d) the fight must have been with the person killed.

21. In the instant case, the attack by the 2nd accused on the deceased would be considered to be one blow in the spur of the moment in the heat of passion upon a sudden fight, but not acted in a cruel manner, since the injury on the deceased on his left head was the cause for the death of the deceased, as opined by the autopsy doctor,P.W.9. We are therefore of the considered opinion that there was a sudden fight leading to the attack on the deceased resulting in his death.

22. Though the second accused caused the injury on the deceased in the sudden fight, he did not act in a cruel or unusual manner, as there is no material to show that thereafter any injury was inflicted when the deceased was in a helpless condition. That being so, Exception 4 to Section 300 IPC is clearly applicable.

23. It is clear from the evidence of P.W.1 that there was a wordy quarrel and in that, without any premeditation, the 2nd accused attacked the deceased on his head with force (X';fpg; nghl;lhd;), causing the death of the deceased, which corroborates the medical evidence. We are therefore of the opinion that the accused had no intention to cause death or inflict grievous injury leading to death of the deceased. Therefore, the 2nd accused is liable to be convicted under section 304 Part II IPC.

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24. In the result, the appeal is party allowed. The conviction and sentence imposed on the 1st accused under section 302 read with 34 IPC is set aside and instead, he is convicted under section 323 IPC and sentenced to the period already undergone. Similarly, the conviction and sentence imposed on the third accused under section 302 IPC is set aside and instead, he is convicted under section 323 IPC and sentenced to the period already undergone. So also, the conviction and sentence imposed on the 2nd accused under section 302 IPC is set aside and instead, he is convicted under section 304 Part-II IPC and sentenced to undergo rigorous imprisonment for a period of four (4) years with the fine and default sentence already imposed. The bail bonds, if any, executed by the accused 1 and 3 shall stand cancelled. In so far as the accused 1 and 3 are concerned, the fine amount, if paid, shall be refunded to them.

Sd/
Asst.Registrar

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Sub Asst.Registrar

na.

Copy to:

1. The District Munsif cum Judicial Magistrate,
Denkanikottai

2. -do-thro' The Chief Judicial Magistrate,
Dharmapuri @ Krishnagiri

3. The 1st Additional Sessions Judge.
Dharmapuri District at Krishnagiri.

4. -do-thro' The Principal Sessions Judge,
Dharmapuri @ Krishnagiri.

5. The Chief Judicial Magistrate,
Salem.

6. The Superintendent,
Central Prison, Salem.

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7. The Superintendent,
Central Prison, Vellore.

8. The Director General of Police,
Chennai - 4.

9. The District Collector,
Dharmapuri,

10.The District Collector,
Salem,

11. The District Collector,
Vellore.

12. The Inspector of Police,
Royakottai Police Station,
Royakottai, Krishnagiri District.

13. The Public Prosecutor
High Court, Madras.

2 cc To Mr.K.Selvarangam, Advocate, SR.44665.

Criminal Appeal No.1360 of 2004

GM(CO)
RVL 26.10.2006

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